



Thomas M. Menino, Mayor
Mike Lynch, Director

Cable Communications/OTC/MIS
City of Boston
43 Hawkins Street, Boston, Massachusetts 02114
Telephone: 617/635-3112
Facsimile: 617/635-4475
E-mail: mike.lynch@ci.boston.ma.us

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Andrea Nixon
Clerk, Cable Television Division
Dept. of Telecommunications and Energy
One South Station
Boston, MA 02111

RE :

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY, CABLE TELEVISION
DIVISION

CTV 06-1, issued May 5, 2006, PROPOSED AMENDMENTS TO RULES AND
REGULATIONS GOVERNING THE CABLE TELEVISION LICENSING PROCESS

[The proposed regulations would revise 207 C.M.R. § 3.00 by establishing a new cable licensing process in a city or town where the issuing authority has previously granted at least one cable license, and the applicant seeks to offer cable television service in competition with the incumbent provider.]

The proposed regulations would also revise 207 C.M.R. § 3.09, governing appeals of an issuing authority's licensing decision. In addition, on its own motion, the Cable Division includes in this rulemaking proceeding a proposal to make a technical correction to 207 C.M.R. by changing "Community Antenna Television Commission" to "Community Antenna Television Division" in the title, and the reference "Commission" to "Division" in each instance it appears in the section.]

Dear Ms. Nixon:

On behalf of the Issuing Authority for the City of Boston, Mayor Thomas M. Menino, I would like to register our opposition to the March 16, 2006 rulemaking petition of Verizon New England d/b/a Verizon Massachusetts ("Verizon") filed with the Cable Division of the Massachusetts Department of Telecommunications and Energy ("Division" and "Department" or "DTE"). This petition, entitled "Petition of Verizon for Adoption of Competitive License Regulation," seeks new regulation imposing a three month limitation on the licensing process for competitive video entrants.

The City of Boston believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Community Information

Boston, Massachusetts is a city with a population of 600,000. Our franchised cable provider is Comcast Corporation and our Open Video System (OVS) over-builder is RCN. Our Regional Bell Operating Company (R-BOC) is Verizon of Massachusetts. Our community has negotiated cable franchises since 1982 and we issued our first OVS agreement in 1996. Over the last ten years, we have renewed, transferred, amended and dissolved franchises as the situation(s) warranted in a manner that was responsive to changes in law, regulations and/or market.

Competitive Cable Systems

The City of Boston amended and renewed the original cable franchise of Cablevision Systems Corp., and amended and transferred the Renewal License to Comcast.

RCN originally launched their competition in Boston as an OVS in 1996. At that time, RCN was a partner in a limited liability venture with Boston Edison, our local electric company. Subsequently, the incumbent cable provider sued both RCN and Edison, as well as the City, challenging their access to the Public Right of Way provided through the city's Public Improvement Commission. The U. S. District Court rejected the motion in preliminary hearings. In 1999, RCN's OVS became our second cable franchise. But, following their Chapter 11 bankruptcy restructuring, RCN reverted back to OVS status with City approval.

Under the direction of Mayor Thomas M. Menino to support and encourage the introduction of new technologies and competition, the city administration established an Office of Telecommunications as a point of entry and liaison service for broadband, wireless and telecommunications service seeking to conduct business and provide services to Boston's residents and businesses.

Through its Public Improvement Commission (PIC), Boston established the first fiber optic policy within city government for its Public Right of Way (PROW) management. The Lead Company Policy for underground deployment was adopted in 1988 and has been amended a number of times through the years in order to accommodate the changing needs of the industry while protecting the right of way. It was this policy's collaborative foundation, and the flexibility and understanding of our PIC commissioners, that became a model for other local governments to follow.

Boston has met a number of times over the last two years with Verizon of Massachusetts to discuss system upgrades, new services and the potential for cable franchising. These meetings go above and beyond the weekly sessions before the PIC for PROW management. Rather, the purpose has been a mutual dialogue on how best to assist Verizon as they enter their new video market and provide competitive service in Boston.

To date, Verizon has declined the City's repeated encouragement to enter a cable franchise negotiation, opting instead to pursue a moderately-paced rebuild of existing plant and line drops at the neighborhood level of city subdivision.

The City has attempted to educate Verizon about the informal and expedited franchising processes available in order to counter the erroneous perception that cable franchising is somehow burdensome.

Oddly enough, Verizon has opted to pursue franchising in other, smaller Massachusetts communities and has already executed some new franchises and begun offering their FiOS service.

Yet, according to comments by Verizon's chief executive officer, Ivan Seidenberg, published in the Wall St. Journal on February 1, 2006:

"This is the only threatening comment I'll make. . . . Remember, there are some franchises that are big. So let's take the city of Philadelphia -- it's big," he said. "Then you've got all these oodles of them in the state of New Jersey, or Virginia."

"So at some point, if we don't clean up this process, we just won't be in a position to do all the things that we think could be done," he said. "If we don't see some change in behavior here, I think we are going to have to question how much we can do and how fast we do it."

Asked if that meant he would focus on big franchises rather than little ones, he replied, "It's something that we have to think about."

Such comments appear to indicate a decision by Verizon not to pursue franchising in major cities. As such, we can only hope that the absence of any Congressional action on national franchising legislation will have the positive effect on Verizon of forcing them to pursue big city cable franchising. If and when this happens, the City of Boston stands ready to expedite the process.

We cannot understand the petition by Verizon to amend 207 C.M.R., since Verizon has declined to enter our local cable market and there are no barriers to entry.

Much has been published, as in the article above, about the burden of the franchising process in the communities that Verizon intends to serve as a video provider under Title VI. What Verizon fails to mention is that they are already universal providers of telephony service under Title II in these very same communities. Therefore, they already have an infrastructure, as well as service and administrative support capable of meeting any perceived obstacle. This was something that the cable companies have had to build over the last 23 years in our City. Verizon has had 100 years to build and upgrade.

National Franchising Legislation and Public Right of Way Authority

The Telecommunications Act of 1996 redefined the video marketplace and who might enter. The Communications Opportunity, Promotion and Enhancement (COPE) Act passed by the House of Representatives on June 8, 2006 and the renamed Advanced Telecommunications and Opportunity Reform – COPE Act (S.2686) approved June 29, 2006 by the U. S. Senate Committee on Commerce, Science and Transportation point to a likely revision of federal telecommunications law in the very near future.

Local franchises provide local government with the means to address local issues and appropriately oversee the operations of cable service providers in the interest of local residents. Historically, video providers work with Local Franchising Authorities (LFA's) to establish local franchises that allow each community, including ours, to have a voice in how local cable systems will be implemented and how local residents will be served. 207 C.M.R., defines a process and protection for the provider, but also guarantees that meeting local needs will not be a burden to their business.

Conclusions

As I hope we've illustrated, the local cable franchising process in Massachusetts functions well for Boston and for our providers.

Working with the industry, we seek to see that the needs of our local residents and communities are met while we balance the business needs of cable providers to utilize our Public Right of Way.

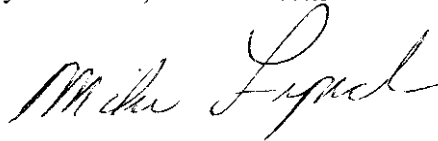
Working with the Commonwealth and other Massachusetts communities, we seek to make sure that good services and choice are available for all our residents and all our neighborhoods.

In Boston, we find that our PROW management processes afford swift and balanced access to our streets, involving the industries and providers in our policy development.

Further, Boston has demonstrated a strong track record of efficient management as an LFA. We question the role of the Petitioner in requesting a new regulation imposing a three month limitation on the licensing process for competitive video entrants when they have ignored our invitation to engage in just such a process for the last 18 months.

The City of Boston therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under state regulations (207 C.M.R.) and law, MGL 166A with regard to either existing cable service providers or new entrants.

Respectfully submitted,
City of Boston, Massachusetts

A handwritten signature in black ink, appearing to read "Mike Lynch". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

By: Mike Lynch, Mayor's Cable Office
on behalf of the Issuing Authority,

Thomas M. Menino
Mayor of Boston
1 City Hall Square
Boston, Massachusetts

cc: The Honorable Thomas M. Menino, Mayor of Boston
Dennis A. DiMarzio, Chief Operating Officer
William F. Sinnot, Corporation Counsel
Dina Siegal, Intergovernmental Relations